

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

BRENT EVERETT RYAN

PLAINTIFF

VS.

CIVIL NO. 1:17-CV-00128-HSO-JCG

PELICIA HALL, ET AL

DEFENDANT

VIDEOCONFERENCE OMNIBUS HEARING

BEFORE THE HONORABLE JOHN C. GARGIULO
UNITED STATES DISTRICT JUDGE

FEBRUARY 26, 2019
GULFPORT, MISSISSIPPI

APPEARANCES:

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1
2 **THE COURT:** We are on the record, cause number
3 17:128, in the matter of Ryan versus Hall. And in that matter,
4 is the defense ready to go forward?

5 **MR. MAY:** We are, Your Honor.

6 **THE COURT:** And, sir, if you could please introduce
7 yourself into the record and who you represent.

8 **MR. MAY:** Yes, Your Honor. My name is Mac May. I'm
9 with the Mississippi Department of Corrections. And make sure
10 I get the parties right here. I am representing Pelicia Hall,
11 Jacqueline Banks, Marshall Turner, Richard Pennington, Joseph
12 Cooley, Sheneice Hartfield Evans, and Pearlie Smith.

13 **THE COURT:** Thank you, sir. Mr. Ryan, can you hear
14 me okay?

15 **PLAINTIFF RYAN:** Yes, sir, I can.

16 **THE COURT:** Good afternoon to you, sir. I want to
17 apologize for not starting on time, I was in the middle of
18 another hearing, and it went a little bit longer than expected.
19 I know your time is valuable to you, so I apologize to you for
20 the late start, okay?

21 **PLAINTIFF RYAN:** Not a problem.

22 **THE COURT:** Mr. Ryan, to begin, I'll ask you, have
23 you ever been through one of these before? You might have
24 heard it called a Spears hearing or an omnibus hearing?

25 **PLAINTIFF RYAN:** Yes, sir. I've been through a

1 Spears hearing with the northern district, never with the
2 southern.

3 **THE COURT:** Okay. Do you remember who the judge was
4 on the northern district?

5 **PLAINTIFF RYAN:** Jane M. Virden.

6 **THE COURT:** Judge Virden, okay.

7 **PLAINTIFF RYAN:** Yes.

8 **THE COURT:** Well, you know, I might do things a
9 little different from Judge Virden, so I'm going to kind of
10 explain everything to you. I think you have a right to know
11 everything that's going on with your case, and I apologize to
12 you if I'm going to be telling you stuff you already know,
13 okay?

14 **PLAINTIFF RYAN:** That's okay. All right, thank you.

15 **THE COURT:** All right. We are here as a result of
16 the lawsuit that you filed. And you're proceeding without the
17 payment of costs, we call that IFP, it stands for in forma
18 pauperis. You requested to proceed that way, and I granted
19 that request to you, but that makes your case fall under the
20 Prison Litigation Reform Act. That, in the first instance,
21 requires the Court, and when I say the Court I'm talking about
22 myself, it requires the Court to screen your case.

23 Now, what does that mean when we screen your case?
24 We're supposed to determine whether or not you've stated a
25 claim under which relief can be granted, and whether or not

1 your claim has at least an arguable basis in law and an
2 arguable basis in fact to proceed.

3 So every civil case that's filed in the United States
4 has to have at least two things, you have to have the law and
5 you have to have the facts together before the case can go
6 forward, and that's what we're going to be discussing this
7 afternoon. Now, when I say screen the case, what does that
8 mean? The first thing I do is I review your complaint, and
9 that's the first thing that you actually filed with the court,
10 with the federal court. But sometimes those are a little bit
11 difficult or unclear for us to understand, so what I like to do
12 is have a hearing and actually bring you in. Obviously, we're
13 on a teleconference right now. But bring you in to court and
14 allow you to tell me in your own words what your lawsuit is
15 about, and how you feel each defendant, that's the people
16 you're suing, violated your constitutional rights. You don't
17 have to state which specific constitutional right, you can just
18 say it in your own words, okay?

19 **PLAINTIFF RYAN:** Yeah.

20 **THE COURT:** And you and I will discuss your case.
21 Now, I listen to what you have to say. I take that into
22 consideration along with your complaint, and then, again, I'll
23 come up with a conclusion as to whether or not your case has at
24 least an arguable basis in law and in fact to proceed. Are you
25 with me so far?

1 **PLAINTIFF RYAN:** Yes, sir.

2 **THE COURT:** Okay, good. We're also going to discuss
3 some procedural aspects to your case, some things that you may
4 or you may not be aware of, but because I'm required to
5 consider everything you say as a supplement to your complaint,
6 not an actual amendment to your complaint, everything that you
7 tell me needs to be under oath. Are you able to raise your
8 right hand?

9 **PLAINTIFF RYAN:** I am.

10 **THE COURT:** Okay, I'd ask that you raise your right
11 hand and be administered the oath.

12 (Oath Administered)

13 **THE COURT:** Thank you, sir. You may lower your hand.
14 Sorry, about that, Mr. Ryan.

15 **PLAINTIFF RYAN:** That's okay.

16 **THE COURT:** The first thing before we officially
17 proceed, and there's really not going to be anything official
18 about it, but before we actually start discussing your case,
19 you have an option to choose whether you want a district judge
20 to preside over your case or a magistrate judge to preside over
21 your case. I've previously introduced myself to you. I'm
22 Magistrate Judge Gargiulo. The district judge that would be
23 assigned to your case or is assigned to your case is Judge
24 Halil Suleyman Ozerden. Now, you're probably aware of Judge
25 Ozerden. He's already ruled -- as a matter of fact, I think he

1 dismissed several of the defendants that you sued on this case
2 already.

3 I can tell you that there's no difference between the
4 two judges, the same procedures are going to be used, the Rules
5 of Evidence are the same, your right to appeal is the same.
6 Everything is the same right down the line with the only
7 possible difference being a magistrate judge, which is what I
8 am, can get to your case much quicker than a district judge,
9 all right? So do you understand the difference between the two
10 judges?

11 **PLAINTIFF RYAN:** Yes. Yes, I do.

12 **THE COURT:** And I'll tell you, you're not going to
13 make Judge Ozerden upset if you decide to go with me, and
14 you're not going to make me upset if you decide to go with
15 Judge Ozerden. We both have plenty of cases and lots to do,
16 you're not going to make either one of us angry. Again, the
17 only way it would affect you is a magistrate judge can get to
18 your case much quicker than a district judge. So with that
19 being said, would you consent to a magistrate judge presiding
20 over your case?

21 **PLAINTIFF RYAN:** No, sir. I actually wrote a letter
22 to the court, to the court clerk, and told her I'd rather have
23 the district judge take it.

24 **THE COURT:** All right, sir. And just out of sheer
25 curiosity for my own edification, what went into that decision?

1 **PLAINTIFF RYAN:** Well, to be honest with you, I have
2 been waiting for this hearing for about two years, and I've
3 only heard from Judge Ozerden one time, and I've heard from you
4 a few times. So I want to try somebody new, you know. Just
5 being honest with you.

6 **THE COURT:** So you want to go with Judge Ozerden?

7 **PLAINTIFF RYAN:** Yes, sir.

8 **THE COURT:** Okay. All right. That's fine. Now,
9 I'll tell you I'm still going to be involved in the case, and
10 I'm still going to conduct the hearing. And I will also decide
11 the discovery issues, as well as other issues in the case.

12 **PLAINTIFF RYAN:** Okay.

13 **THE COURT:** I wanted to bring up just a couple other
14 aspects to your request with you.

15 **PLAINTIFF RYAN:** Yes.

16 **THE COURT:** I, like most good judges, bring my staff
17 in here with me, and you saw us do it a little bit earlier, if
18 you happen to see them hand me a document or anything like that
19 or a Post-it, Mr. Ryan, I don't want you to think we're talking
20 bad about you or anything like that. They're simply probably
21 telling me something I should've done that I didn't do, okay?

22 **PLAINTIFF RYAN:** Yeah, I understand.

23 **THE COURT:** Okay. Second thing is I notice that
24 you've requested a jury trial; is that correct?

25 **PLAINTIFF RYAN:** Yes, sir.

1 **THE COURT:** All right. And that's entirely up to
2 you. I would tell you that if a jury were brought in on this
3 case, the Court would not be allowed to relax the Rules of
4 Evidence, okay?

5 **PLAINTIFF RYAN:** I understand.

6 **THE COURT:** You would be held to the same standard as
7 a trained and experienced attorney, a practitioner. And Judge
8 Ozerden would not be allowed to relax those rules just because
9 you're representing yourself. Now, if you were to request a
10 bench trial instead of a jury trial, Judge Ozerden would serve
11 as the jury. And in that event, he would be allowed to relax
12 the Rules of Evidence. Do you understand that?

13 **PLAINTIFF RYAN:** Yes, I do. I do.

14 **THE COURT:** I would also tell you, sir, that if a
15 jury were brought in, they would be aware that you are a
16 prisoner, do you understand that?

17 **PLAINTIFF RYAN:** Yes, I do, sir.

18 **THE COURT:** And I can tell you, to my knowledge,
19 felons are not allowed to serve on jury duty, so I'm not sure
20 how a jury would receive the fact that you are a convicted
21 felon, so I'm just telling you that --

22 **PLAINTIFF RYAN:** I understand.

23 **THE COURT:** Okay. Now, on the flip side, Judge
24 Ozerden has been dealing in the criminal law field, and I can
25 assure you the fact that you're a convicted felon would not

1 weigh in to his decision if you were to decide to go with a
2 bench trial instead of a jury trial, all right?

3 **PLAINTIFF RYAN:** I understand.

4 **THE COURT:** The last thing I would tell you is there
5 is a process of jury selection, it's called voir dire, voir
6 dire, depends on how you want to pronounce it. And I can tell
7 you that it's not the easiest of processes. It, in a sense, is
8 when you would be picking the jurors who would decide your
9 case. Attorneys are trained on how to do this and go through
10 -- and are experienced on how to do this. No one would be able
11 to help you pick the jury if you were to select or continue
12 with your request for a jury trial. So the judge would not be
13 able to help you. You would, in essence, be picking a jury
14 against an attorney that's trained on how to do it and is
15 experienced on how to do it. But if you were to waive that
16 jury demand and instead go with a bench trial, you wouldn't
17 have to worry about that jury selection. Do you understand
18 that?

19 **PLAINTIFF RYAN:** Yes, sir. I just have one question,
20 how many challenges and -- how many challenges and things like
21 that in voir dire do I have?

22 **THE COURT:** Now, that's something that -- I couldn't
23 give you the advice on that, all right? The Court can't assist
24 you on that. And that's something --

25 **PLAINTIFF RYAN:** I'll read the rules, sir.

1 **THE COURT:** I'm sure you will. I'm telling you that
2 there as another option, and that would be to have the judge
3 preside as the jury on your case. The last aspect to your
4 request for a jury trial is jury instructions, all right. Each
5 of the parties give the judge their proposed jury instructions
6 for the juries to be charged. And again, I would tell you
7 attorneys are trained on how to do this, and there's a lot of
8 research that's involved in it. No one would be able to help
9 you select or craft your jury instructions if you were to go
10 forward with a jury demand; however, if you were to waive the
11 jury demand and proceed with a bench trial, there would be no
12 need for the jury instructions, do you understand that, sir?

13 **PLAINTIFF RYAN:** Yes, sir.

14 **THE COURT:** All right. And with that being said, are
15 you still requesting a jury trial?

16 **PLAINTIFF RYAN:** Yes, sir.

17 **THE COURT:** Okay. All right, sir. Well, I have read
18 your complaint, but what I would ask you to do, again, is
19 discuss with me why you're suing the individual defendants --
20 now, Judge Ozerden has already dismissed quite a few of the
21 defendants that you -- claims, I'm sorry, not defendants,
22 claims. So what I'd like to do is limit this hearing to the
23 claim, I think the one claim, ventilation and exercise time,
24 that Judge Ozerden allowed to go forward.

25 So with that being said, if you could please speak to

1 me about your basis for your lawsuit as it pertains to -- we'll
2 start with the exercise time.

3 **PLAINTIFF RYAN:** Okay. First of all, I want to say
4 that it's not -- the Court is overlooking the number one
5 cornerstone of my amendment problem. It's First Amendment
6 right to access the courts. Mr. Thomas Cooley, or Richard
7 Pennington and Joseph Cooley were put in there because I have
8 tried to exercise the ARP program for multiple years, and have
9 only received three complete ARP processes. The rest of the
10 time they have usurped or cut off my ARP process in some way,
11 shape or form, or simply lost my ARPs.

12 **THE COURT:** And I don't mean to interrupt you, Mr.
13 Ryan, but the claim that you're talking about right now --

14 **PLAINTIFF RYAN:** Yes.

15 **THE COURT:** Judge Ozerden dismissed that claim.

16 **PLAINTIFF RYAN:** Okay.

17 **THE COURT:** I know you said you wanted to try a new
18 judge out because you haven't heard much from him, but in his
19 order that you did hear from him he dismissed that claim.

20 **PLAINTIFF RYAN:** Yes. Okay. Well, I wasn't sure if
21 the Court had even seen it because I didn't remember reading
22 about it in any of my orders. With that being said, I will go
23 with the exercise time. Sir, from January of 2016 until
24 January of 2018, I was at SMCI prison. And there you should
25 get yard call maybe once a day, sometimes four or five times a

1 week. During my two years there, I only received approximately
2 17 yard calls in two years. Sir, the last time I have left a
3 DOC building was March 31st of 2017. I've not been outside,
4 until today, since March 31st, 2017. And I believe that's not
5 Constitutionally sound.

6 **THE COURT:** Let me ask you this. Now, January of
7 '16 to January of '18, where were you housed?

8 **PLAINTIFF RYAN:** I was -- Area 2 at SMCI.

9 **THE COURT:** And where are you currently?

10 **DEFENDANT:** At Mississippi State Penitentiary, Unit
11 42, Hospital Ward. And I understand that in a hospital ward, I
12 am a quadraplegic now, I can't move my arms or legs, so it
13 really wouldn't do much good for me to go outside now. But
14 before this happened, I was begging to go outside and we'd
15 never get out. We'd never get out of the building.

16 **THE COURT:** That's my question to you, Mr. Ryan.
17 January the 16th to January -- I'm sorry, January of 2016 to
18 January of 2018, were you a quadraplegic at that time?

19 **PLAINTIFF RYAN:** No. January 23, 2018, I was
20 assaulted while sleeping, and they broke my neck. And since
21 then, I've been a quadraplegic.

22 **THE COURT:** I'm sorry that that happened to you, sir.

23 **PLAINTIFF RYAN:** It's okay. And you know, that's
24 just one of the many, many problems that I see. But since
25 we're just talking about those two, I would say the ventilation

1 was a really bad problem due to the fact that it's really not
2 safe at Greene County, SMCI, it's really not a safe building.
3 They're understaffed, they're overworked. And they have one
4 staff member for every 200 inmates. And when an inmate wants
5 to assault another inmate or whatever, there's no ventilation
6 in the building, so they turn the hot water on and fog up the
7 window to the guard tower. So they can do whatever they want,
8 talk on the phone, smoke drugs, whatever, or kill somebody, and
9 there's nobody in there to see what's going on. And so I saw
10 that happen multiple times, and I figured somebody has to do
11 something about this. That's the only reason why I filed suit,
12 sir. I mean, this is not my idea of fun. It's very tedious,
13 horrible job having to sue somebody. A very tedious job,
14 but --

15 **THE COURT:** I understand that.

16 **PLAINTIFF RYAN:** I felt I needed to do it.

17 **THE COURT:** So the ventilation claim, are you filing
18 that on behalf of other people?

19 **PLAINTIFF RYAN:** Not now. I'm filing it on behalf of
20 the time I was there.

21 **THE COURT:** Okay.

22 **PLAINTIFF RYAN:** And I'm also in a building right now
23 with no ventilation. The room I'm at MSP, which just checked
24 on December 21st, and they have no ventilation in the room that
25 I'm in. So this is not just strictly for SMCI, there seems to

1 be a problem that is all of Mississippi, so --

2 **THE COURT:** Okay.

3 **PLAINTIFF RYAN:** I'm kind of --

4 **THE COURT:** The exercise time claim that you filed --

5 **PLAINTIFF RYAN:** Yes.

6 **THE COURT:** As I appreciate it, you said you were
7 only allowed out on yard call 17 times between January of 2016
8 to January of 2018; is that correct?

9 **PLAINTIFF RYAN:** Yes. And that's just an estimate,
10 sir, because MDOC has all of my property. They have not given
11 me any of my property. I just received an ARP yesterday, was
12 the first time where they actually admitted that they lost my
13 property. So I don't have any of my paperwork. All the
14 papers, years of studying, hours of researching, jeopardizing,
15 doing all this hard work is gone because MDOC didn't want to
16 give it to me, so I'm just guessing. But I had a log. I had a
17 log every day, whether I went out the building, whether I went
18 to the doctor, whether I went to the chapel, wherever I went I
19 kept a log, and MDOC now has it, and I'm no longer allowed to
20 get it. You see what I mean? I don't know what else to do,
21 sir.

22 **THE COURT:** Yes, sir. I understand. Well, we're
23 going to have process of discovery, I anticipate, in this case,
24 okay?

25 **PLAINTIFF RYAN:** Okay.

1 **THE COURT:** The fact that you only had approximately
2 17 yard calls, was that unique to just you, or did other people
3 get more yard calls?

4 **PLAINTIFF RYAN:** Well, you see, here is the deal. It
5 is seven buildings, okay. And in the seven buildings, they're
6 locked up in three different sections. Well, the D Building,
7 D1 and D2, is a section, that's 200 people apiece, so that's
8 400 people. They may get yard call twice a week; whereas C1
9 and C2 may not never get yard call. And we'd ask them, hey --
10 because the older people aren't going to cause any problems,
11 they're not going to start any fights, and that's where the
12 older individuals are housed. Older people, sicker people are
13 housed in the D Building, and they're just less problems, so
14 they are more likely to get out than the people who are housed
15 in general population, you know, that could be a problem. And
16 they just really don't want to deal with it, so they don't let
17 us out of the building.

18 **THE COURT:** All right. So you don't think that you
19 were isolated in this -- you believe it's, say, a practice, a
20 custom or a policy?

21 **PLAINTIFF RYAN:** Yes, yes. Exactly.

22 **THE COURT:** All right. Now, just speaking as to your
23 exercise time claim, how did it adversely affect you that you
24 only got yard call approximately 17 times during that time
25 span?

1 **PLAINTIFF RYAN:** All right, well to be -- to be frank
2 with you --

3 (OFF RECORD)

4 **THE COURT:** Mr. Ryan, can you hear me?

5 **PLAINTIFF RYAN:** Yes. Yes, I can.

6 **THE COURT:** What I'm going to do -- wait one second.

7 **PLAINTIFF RYAN:** Go ahead.

8 **THE COURT:** What I'm going to do is I'm going to ask
9 the court reporter to state where you left off, all right. And
10 madam court reporter, if you could please --

11 (Previous question read back)

12 **THE COURT:** Mr. Ryan, where we left off before there
13 was an electronic breakdown in our telecommunication, I had
14 asked you with regard to the exercise time claim, how did it
15 adversely affect you. And you were just beginning to respond.
16 You said, to be perfectly frank, and then the audio cut off, so
17 you may proceed.

18 **PLAINTIFF RYAN:** To be perfectly frank with you, it's
19 just not psychologically good to be stuck in a building 24
20 hours a day around the same 100 seriously violent -- and, you
21 know, it's just not safe, it's not -- it doesn't help your
22 depression at all. I started getting depressed, I couldn't
23 eat. It got to where, you know, just being around all the
24 smoke and constant fighting, that's just not good. I began to
25 lose my mind. And I put in a medical slip for that, you know

1 what I mean, I did what I could to try to tell them that this
2 was a problem stemming from no outside exercise. And they just
3 did nothing.

4 **THE COURT:** Okay. So you did seek medical attention
5 for depression?

6 **PLAINTIFF RYAN:** Yes, yes.

7 **THE COURT:** All right. And were you treated for
8 depression?

9 **PLAINTIFF RYAN:** Yes, but they wanted to put me on
10 psychotropic medicine, and I -- I don't mind Prozac or Lexapro
11 or some mild antidepressant, that would've been fine, but I
12 will not be put on Seroquel or Trazodone, these really big
13 downers that can literally ruin your brain. I'm not a big fan
14 of psychotropics.

15 **THE COURT:** Okay.

16 **PLAINTIFF RYAN:** Basically --

17 **THE COURT:** Go.

18 **PLAINTIFF RYAN:** I was going to say, basically, they
19 just said, you know, it'll be all right, keep your eyes -- and
20 that's what I did. I tried to stay in my Bible, stay studying
21 and doing the law. That's where I got my -- passed my time.

22 **THE COURT:** All right. Now, you're suing Pelicia
23 Hall, who is the commissioner. Why are you suing Pelicia Hall?

24 **PLAINTIFF RYAN:** Simply because she is in charge of
25 all institutions within the State of Mississippi. And at first

1 I wasn't sure if she would be immune or anything, but when it
2 comes right down to it, she has a responsibility for each and
3 every facility within her -- within her state. And I felt as a
4 commissioner, she could've done something, too. And I wrote
5 her multiple letters. Wrote her letters, sent letters to
6 anybody, anybody that would listen asking for help because this
7 is a seriously bad problem and needs to be fixed, and I'm not
8 sure how else we can fix it, you know?

9 **THE COURT:** Well, I guess before we get into the
10 individual defendants, let's speak to your ventilation claim.

11 **PLAINTIFF RYAN:** Yes.

12 **THE COURT:** Tell me about that.

13 **PLAINTIFF RYAN:** The ventilation -- first of all,
14 when I was in Building C-2, which was the first year, 2016, the
15 ventilation was okay. I thought it was horrible -- but they
16 only had one fan for 100 people, one 42-inch fan to blow on 100
17 people, and it's literally impossible. So it gets hot in
18 there.

19 Mississippi is probably the hottest state in the
20 Union. And when you get the aluminum buildings getting over
21 100 degrees, it can be up to 115, 120 inside those. And we had
22 a thermostat on the wall there. And after I saw that, you
23 know, people taking showers all day to try to cool off, but
24 that just brings up the humidity. And the ventilation was a
25 major problem because the steam wouldn't go anywhere. So I

1 feel like the ventilation was a major problem because the
2 smoke, the steam, humidity, and just pretty much the airflow,
3 you know. It's very hard to live in a smoked-out, hot, steamy,
4 muggy place, it's just unbearable.

5 **THE COURT:** Now --

6 **PLAINTIFF RYAN:** That's all.

7 **THE COURT:** Your ventilation claim, is that limited
8 for that one year in 2016?

9 **PLAINTIFF RYAN:** No, sir. No, sir, because when I
10 moved in 2017, February 8th, 2017, I moved to Building C1,
11 which is right next door. And I thought C2 was bad until I
12 moved to C1. Turns out C1 is even worse. They have
13 half-working fans, it only works about half the time. It's
14 still the same, one fan for the whole 100 percent people. So
15 I'm writing ARPs, I'm doing everything I can to try and fix
16 this problem, and I'm literally just ignored. Well, they told
17 me the fans were on order. And I waited six, eight months for
18 the fans to come, and they never came.

19 It's just horrible to try to live in a facility with
20 no air conditioning and no fans, no ventilation. I don't even
21 think it's safe. So when I moved to C1, it was even worse.
22 Then they moved me to A2. That was even worse. That's the
23 worst building I ever been in. And then I moved to B1, which
24 is the final place I was at, and it was a little better by then
25 because they had the fans at that time. They had received some

1 fans, so it was a little bit better. And plus it was the
2 wintertime, so I can't adequately say how the summers in B1
3 would've been. I know throughout '16 and '17 it was miserable.

4 **THE COURT:** So the fans ultimately came in?

5 **PLAINTIFF RYAN:** Yes. In August of 2017, I believe
6 it was August, don't stick me with that, but I believe it was
7 August of 2017, they did finally bring in three more fans. So
8 that's a total of four fans for each zone. So by -- and
9 believe it or not, it helped a lot, but there's only so much
10 you can do with no fresh air coming in, no ventilation and
11 fresh air actually coming in. It's just blowing around hot
12 air. Blowing around hot air is a lot better than no movement
13 of the air, you know, so I can't -- I did write the courts and
14 let them know everything that was going on. I wrote the courts
15 and let them know what was going and let them know that we just
16 received fans. I let the court know, I'm not trying to get
17 some money off the state. I'm simply trying to fix a seriously
18 broken problem.

19 **THE COURT:** So as to the ventilation, isn't the
20 problem fixed?

21 **PLAINTIFF RYAN:** No. They did put fans in, but they
22 seriously need to go in and clean the return vents. They are
23 so filthy and clogged up, there's no fresh air coming in. You
24 see what I mean? I know with -- I'm not an air specialist, but
25 I know what a velometer is. It's a little machine they stick

1 up to the vents and see if it's working. And the velometers
2 are picking up no return air out of any of the showers or
3 bathrooms, and that's the biggest problem.

4 **THE COURT:** So you've actually -- you've used one of
5 those devices?

6 **PLAINTIFF RYAN:** Yes, yes. I used to be a hand, just
7 helping somebody, but he explained to me exactly what a
8 velometer is. And when I see them, I'll just, hey, come here,
9 you know, does it work on this vent, is this vent working in?
10 And I've actually seen -- because they do have to do
11 inspections and things like that, so I've actually seen the
12 people that inspected. And I've actually seen the velometer
13 reading out zero, zero, zero. It's not getting no fresh air
14 coming in, you know?

15 **THE COURT:** Who did you do that reading with?

16 **PLAINTIFF RYAN:** I'm not sure his name, but the most
17 recent one was December 21, this last December, just not too
18 long ago.

19 **THE COURT:** And who was that with?

20 **PLAINTIFF RYAN:** I'm not sure of the name, but he was
21 here at MSP. They did it right there in my room. And I said,
22 hey, will you check that return vent and see -- he said the
23 reading is zero. I'm not sure. I'm sure the defendants could
24 tell you exactly who it was. I asked him who he was, he said
25 he worked for a private company. I said okay. He didn't

1 really want to talk to me, and I understand, he's just there to
2 do the job.

3 **THE COURT:** What job was that person doing?

4 **PLAINTIFF RYAN:** Inspecting. He was inspecting the
5 ventilation, I guess, the vents for each room in the hospital.

6 **THE COURT:** So it would've been an inspector?

7 **PLAINTIFF RYAN:** Yeah. And that's what I said, he
8 was an inspector. I'm not sure what the name of the company
9 was, but he was inspecting on December 21, Unit 42 at about
10 noon.

11 **THE COURT:** Say that one more time.

12 **PLAINTIFF RYAN:** December 21 at approximately noon,
13 and he was in Unit 42 here at MSP.

14 **THE COURT:** All right. So as to the ventilation
15 claim, as I appreciate it, you requested fans. You filed an
16 ARP with regard to the fans. Ultimately they got the fans, but
17 it is your position that more is required?

18 **PLAINTIFF RYAN:** Yes. And like I said, I'm not
19 trying to just -- I'm not trying to throw salt on a wound, but
20 it's like putting a Band-Aid on a bullet hole, sir. There's
21 only so much you can do, those fans can do if you're not
22 getting any fresh air coming in, you know. And while I do
23 appreciate having more air going around, it's still very hot,
24 it's still miserable. You know, nobody likes to listen to a
25 guy who is in prison, so here we are.

1 **THE COURT:** And then as to the exercise time, as I
2 appreciate it, you feel like you should be allowed out more
3 than you were allowed out for yard call?

4 **PLAINTIFF RYAN:** Yes. Each person -- you know, I
5 can't remember the case law, but I have it in some of my
6 motions, that you should get anywhere from three to five days a
7 week outside, if just for an hour, you know. People on death
8 row get an hour, you know what I mean? Everybody should be
9 entitled to a little bit of sun in their life. And to be
10 honest with you, I haven't been outside in years. And it's
11 very tolling on your psychological and physical body, you know.

12 **THE COURT:** How did the ventilation claim, how did
13 that adversely affect you?

14 **PLAINTIFF RYAN:** I can't say that the ventilation
15 gave me tuberculosis or anything like that. It didn't do
16 anything physically to me; however, psychologically it did. To
17 be hot and humid and stuck inside of a building 24 hours a day,
18 seven days a week is psychologically tolling on a person, you
19 know.

20 **THE COURT:** Did you seek any medical or mental care?

21 **DEFENDANT:** I did put in a few -- yeah, I did put in
22 a few requests for mental health. And they basically told me,
23 you just got to cheer up, man, look on the bright side, stay in
24 the Bible. I appreciate the good pep talks and everything, but
25 it's very, very hard, sir, very hard.

1 **THE COURT:** I can appreciate that. I understand, I
2 don't disagree with you. Did they offer any medication? Was
3 that the same as with your exercise when they offered you
4 medication for depression?

5 **PLAINTIFF RYAN:** No, sir, they didn't offer me any
6 medication. They just basically told me, got to cheer up, it's
7 hot outside anyway, you don't need to be out there. They
8 didn't offer me any -- they basically just -- pat on the back,
9 told me to drink some water and move on.

10 **THE COURT:** Now --

11 **PLAINTIFF RYAN:** I don't know what else I could do.

12 **THE COURT:** As to commissioner Pelicia Hall, are you,
13 in essence, suing her on both of these claims just because of
14 her title, she's the commissioner?

15 **PLAINTIFF RYAN:** Exactly, because she has the power
16 to dictate what goes on and where the money goes and how it's
17 spent. You know, I see her as kind of responsible because, you
18 know, I understand -- I can say this, and this is God's honest
19 truth, they have changed the superintendent, they have changed
20 the warden of SMCI, so they're obviously trying to fix
21 problems, but that didn't help me for the years that I was
22 there, you know. It didn't help me for the time that I was
23 there. And I just felt like she could've helped me, and I
24 wrote her many letters and asked her for help.

25 **THE COURT:** Have you ever met her personally?

1 **PLAINTIFF RYAN:** No, sir. No, sir I have not.

2 **THE COURT:** You're not alleging that she's got like
3 some sort of a personnel vendetta against you for some reason,
4 are you?

5 **PLAINTIFF RYAN:** No, sir. No, sir.

6 **THE COURT:** Jacqueline Banks, I understand, is the
7 superintendent at SMCI?

8 **DEFENDANT:** Yeah, she was.

9 **THE COURT:** She was.

10 **PLAINTIFF RYAN:** She no longer is. Yeah, she was,
11 she no longer is. I just found that out yesterday. She was
12 the main person who could do anything within her power to say,
13 hey, these guards, y'all guards need to get up, you need to
14 step up and start giving people more rec time, you need to fix
15 those ventilation things. She could've called maintenance and
16 had them come clean out the vents and see what's going on, but
17 she just really didn't. She just ignored the problem.

18 **THE COURT:** And same question to you about her, you
19 ever met her personally?

20 **PLAINTIFF RYAN:** No, sir. No, sir.

21 **THE COURT:** You don't feel like she's got some
22 personal vendetta against you individually?

23 **PLAINTIFF RYAN:** No, I don't believe so.

24 **THE COURT:** And are you suing her, in essence,
25 because of her title, she was the superintendent?

1 **PLAINTIFF RYAN:** Yes, and because I wrote her
2 multiple letters and multiple ARPs attempting to solve the
3 problem, and they simply got ignored.

4 **THE COURT:** Okay when you say ignored, did they ever
5 respond to those ARPs?

6 **PLAINTIFF RYAN:** Sometimes, but most of the time they
7 simply disappeared. The ARPs just disappeared. And that's why
8 I'm really upset about my property because I had hand copies of
9 everything I write. I write a lot. And everything that I
10 would write I would keep a hand copy or rough draft or some way
11 to prove that I wrote this on this day. And now I have no
12 proof, no nothing, and MDOC -- now, I'm going to have to pay --
13 just for this litigation right here, I'm going to have to pay
14 to get my whole file, 50 cents a page, I'm going to have to pay
15 for each and every thing. I spent years doing this, thousands
16 of hours of research trying to figure out a way to fix the
17 problem, and I simply -- they stop me the every turn.

18 **THE COURT:** Who is Marshall Turner?

19 **PLAINTIFF RYAN:** He was the warden. He is now the
20 superintendent at the prison I'm at right now, but he was the
21 warden of Area 2. And I did meet him personally. I did know
22 him, I seen him on the yard and stuff. And each time I saw him
23 I'd ask him -- he would say he was going to help us, he's going
24 to -- we're going to talk with the guards and see if we can get
25 y'all some rec time, I'm gonna do this, and I'm gonna do that,

1 but it simply never happened. I'm not sure if he dropped the
2 ball or someone else did, but I felt as the warden of Area 2,
3 it's his responsibility -- and what really makes me aggravated
4 was because the D Building, D1 and D2, they received rec time
5 three or four times a week, no problem. But because of the
6 security issue or whatever issue, you know, they simply didn't
7 want to let us out.

8 **THE COURT:** And I'm not putting words in your mouth,
9 but you said you asked for yard time and they just didn't do
10 it. You did receive yard time, just not what you consider to
11 be Constitutionally adequate?

12 **PLAINTIFF RYAN:** Yes, we did receive it. Very
13 rarely, 17 times in two years, that's 720 days. 17 times just
14 not gonna cut it.

15 **THE COURT:** And again, Marshall Turner, you feel like
16 Marshall Turner has got a personnel vendetta against you or are
17 you basically suing because of his title as the warden?

18 **PLAINTIFF RYAN:** Yes, I'm simply suing him because he
19 was the warden over Area 2 at that time.

20 **THE COURT:** I see where Richard Pennington is being
21 sued. What does Richard Pennington have to do with ventilation
22 or exercise time?

23 **PLAINTIFF RYAN:** He does not. He is the person that
24 had to do with the processing of my ARPs, and he's the ARP
25 director. And he personally has said to my case manager here,

1 he said, do not help this guy in any way, shape or form, he's
2 got lawsuits pending, you know. So I do believe he has a
3 personnel vendetta against me, but we're no longer speaking
4 about those grounds, so I can't --

5 **THE COURT:** Okay. Would you voluntarily withdraw
6 your claim against him since the District Judge Ozerden has
7 dismissed those claims?

8 **PLAINTIFF RYAN:** Yeah, I guess I'm gonna have to for
9 expediency purposes. That's okay. We'll do that to save
10 myself some --

11 **THE COURT:** I guess just for the record I need to
12 confirm you're voluntarily dismissing it, at least that
13 defendant?

14 **PLAINTIFF RYAN:** Yes. Yeah.

15 **THE COURT:** Now, I also see where we're suing Joseph
16 Cooley. What does Joseph Cooley have to do with exercise time
17 or ventilation?

18 **PLAINTIFF RYAN:** Nothing, he was also the -- he is
19 what they call the ARP investigator, and he investigates. So
20 we're going to go ahead and dismiss that claim also, or dismiss
21 that defendant also.

22 **THE COURT:** All right, sir. Now, I see where you're
23 suing Pearlie Smith?

24 **PLAINTIFF RYAN:** I was, but the district judge had
25 already dismissed the claim for reasons unknown to me. But the

1 district judge has already dismissed it, so we'll dismiss that
2 defendant, also.

3 **THE COURT:** All right. And then I see, maybe it's
4 pronounced Sheneice, I think, Sheneice Hartfield Evans?

5 **PLAINTIFF RYAN:** Yes. Same thing, dismiss that
6 defendant, also, for expediency purposes.

7 **THE COURT:** So just so we're clear right now, the
8 defendants in the lawsuit that you're suing on the exercise
9 time and the ventilation are commissioner Pelicia Hall,
10 Superintendent Jacqueline Banks, and the former Warden Marshall
11 Turner; is that correct, Mr. Ryan?

12 **PLAINTIFF RYAN:** That is correct, sir.

13 **THE COURT:** Mr. Ryan, I apologize I didn't tell you
14 this earlier, but I'm going to give the defense attorney an
15 opportunity to ask you some questions, all right?

16 **PLAINTIFF RYAN:** That's okay.

17 **THE COURT:** Normally, I would've told you on the
18 front end so you don't feel like you're blindsided, but I'm
19 about to allow the defense counsel to ask you some questions.
20 And, counselor, if you're ready to proceed you may, sir.

21 **MR. MAY:** Thank you, Your Honor. Mr. Ryan, regarding
22 your exercise time claim, have you been diagnosed with any type
23 of physical or mental ailment that's been directly attributed
24 to a lack of exercise time at SMCI?

25 **PLAINTIFF RYAN:** Simply depression.

1 **MR. MAY:** So has someone diagnosed with you
2 depression, and they have said the cause of your depression is
3 a lack of exercise time?

4 **PLAINTIFF RYAN:** Yes.

5 **MR. MAY:** And who did that? I'm sorry.

6 **PLAINTIFF RYAN:** I imagine his name is -- it's okay.
7 I'm not sure of the doctor's name. The older guy there at
8 SMCI, I can't remember his name. I'm sorry, sir, it's been a
9 year and a half. He is the only --

10 **MR. MAY:** Your testimony --

11 **PLAINTIFF RYAN:** I'm sorry. He is the only doctor
12 there. I'm sorry.

13 **MR. MAY:** Your testimony is that a doctor at SMCI, an
14 older doctor, told you you're depressed, and you're depressed
15 because you haven't been getting adequate exercise time?

16 **PLAINTIFF RYAN:** Yes.

17 **MR. MAY:** But you don't know the name of the doctor?

18 **PLAINTIFF RYAN:** No, I can't remember his name. He
19 is the oldest doctor we got there, him and -- for the life of
20 me, I cannot remember his name.

21 **THE COURT:** Was this doctor --

22 **PLAINTIFF RYAN:** If it'll help you, he was
23 actually -- in the grounds that the judge dismissed, he was one
24 of the defendants that was dismissed, also. And he worked for
25 Centurion Medical Services. So I don't have any property on

1 myself, but you have the motions right there in front of you,
2 you can find his name.

3 **MR. MAY:** So you're saying there was a doctor that
4 was a defendant who was dismissed, and that doctor told you at
5 some point that you had depression, and that depression was due
6 to a lack of exercise at SMCI?

7 **PLAINTIFF RYAN:** Yeah. He told me I was depressed.
8 Now, the reason why I went to see him was because I wasn't
9 getting any yard time, and you know, I couldn't eat and things
10 like that. And so he put me on Prozac, which is for
11 depression, but he never said that the reason why he was
12 putting me on it is because I'm depressed I didn't get yard
13 time. He just simply said, you're depressed, and here is my
14 medicine for it.

15 **MR. MAY:** Were there any other causes, in your
16 opinion, in your lay opinion, for your depression?

17 **PLAINTIFF RYAN:** No, sir.

18 **MR. MAY:** Not the fact that you're incarcerated for
19 25 years?

20 **PLAINTIFF RYAN:** While it is depressing, I actually
21 do have faith in the justice system, and I know that I didn't
22 commit the crime, so I know I'll get out. It's not a problem.

23 **MR. MAY:** Okay. Same question for the ventilation
24 issue. Has any doctor told you that you're suffering from some
25 physical or mental ailment, and that that ailment is due to a

1 lack of ventilation at SMCI?

2 **PLAINTIFF RYAN:** No. I can say that, but no doctor
3 would blame that on the ventilation, but psychologically it is
4 very tolling to have no ventilation in a building with a bunch
5 of hot, sweaty men, in 100 plus degrees for months at a time
6 and was never being let out of that building. Psychologically,
7 it's tolling. That's all I can say.

8 **MR. MAY:** Mr. Ryan, when you speak of a lack of
9 ventilation, are you primarily talking about heat, the heat in
10 the building?

11 **PLAINTIFF RYAN:** No, sir. I'm referring to the heat
12 and the fresh air. Lack of fresh air return vents, return
13 ducts on a ventilation system. You know, you got one system
14 blowing air in, you got one system sucking it out. And when
15 people are putting out, working out, doing things like that,
16 they're putting out a lot of heat. And you need those return
17 vents to suck that hot air out and blow some fresh air in. I'm
18 not just referring to the temperature, although that does get
19 miserable, I'm simply referring to the return vent intake, you
20 know.

21 **MR. MAY:** Okay. Your Honor, I don't have any further
22 questions. I do have some -- I did not bring the documents
23 because I've got a large stack of documents in my office
24 related to Mr. Ryan's confinement, and I wanted to ask the
25 Court and Mr. Ryan what we would need to produce. Of course, I

1 have the usual documents, institutional records, which is a
2 very small stack. The medical records are very large. Most of
3 those are postdate his time at SMCI. But I've got in the
4 neighborhood of about 1,200 medical -- pages of medical
5 records, and then some ARP documents and sick-call requests.
6 I'm happy to produce whatever the Court determines necessary.

7 **THE COURT:** I think I'm looking at the precedent
8 case-law. In order to develop the claims, we probably need a
9 full disclosure.

10 **MR. MAY:** Okay.

11 **THE COURT:** Mr. Ryan, I'm going to order that the
12 defense mail to you your discovery, all right? And you heard
13 the defense attorney just state what that discovery is composed
14 of, it's medical records and your institutional file, okay?

15 (OFF RECORD)

16 **THE COURT:** Can you hear me Mr. Ryan?

17 **PLAINTIFF RYAN:** Yes, sir.

18 **THE COURT:** Before we got cut off, I was telling you
19 that the defense is -- has been ordered by the Court to send
20 you discovery. And you heard what he stated, it's going to be
21 your medical records and your institutional file, okay?

22 **PLAINTIFF RYAN:** Yes, sir. Can I ask you a question,
23 sir?

24 **THE COURT:** I might be able to answer it, go ahead.

25 **PLAINTIFF RYAN:** Okay. Is there any way that you can

1 produce all my documents from this case, the documents which I
2 filed with the Court, simply because MDOC will not -- they have
3 lost my paperwork and I have no paperwork; therefore, I have no
4 leg to stand on legally, you know?

5 **THE COURT:** You would request that through the Clerk
6 of Court.

7 **PLAINTIFF RYAN:** Okay.

8 **THE COURT:** So file a written request for that
9 through the Clerk of Court.

10 **PLAINTIFF RYAN:** Okay.

11 **THE COURT:** And they will generate a cost estimate.

12 **PLAINTIFF RYAN:** You see the problem, officer -- I'm
13 sorry. You see the problem, Your Honor? The cost estimate is
14 the problem, and --

15 **THE COURT:** I don't know what the cost estimate is.

16 **PLAINTIFF RYAN:** Oh, it's going to be quite a bit.
17 But the point is, all these things were taken from me. And
18 what am I to do, Your Honor? What am I to do? I am simply
19 litigating a case -- this is only one case that I have going,
20 you know. I have appeals going in multiple other cases, and
21 they simply took all my property and won't return it. So what
22 am I to do, sir? I don't have thousands of dollars for
23 transcripts.

24 **THE COURT:** As far as this case, I don't know about
25 all the other litigations that you're suing other parties on,

1 but as far as this case you can file a request with the Clerk's
2 office. That's the proper procedure.

3 **PLAINTIFF RYAN:** Okay.

4 **THE COURT:** All right? So what I'm going to do is
5 set a discovery deadline, we'll go April the 25th.

6 **PLAINTIFF RYAN:** Okay.

7 **THE COURT:** And then a motion deadline of May the
8 9th.

9 **PLAINTIFF RYAN:** All right.

10 **THE COURT:** And if you happen to change your mind
11 with regard to consenting to a magistrate presiding over the
12 case, just simply put that in writing as well, and we'll send a
13 consent form. Would the defense consent to a magistrate?

14 **MR. MAY:** We would, Your Honor.

15 **THE COURT:** So I'll let you mull over that. But as
16 of this time forward, Judge Ozerden will be the judge on your
17 case, all right, Mr. Ryan?

18 **PLAINTIFF RYAN:** Okay, thank you.

19 **THE COURT:** Anything else required on the record?

20 **MR. MAY:** Nothing from the defense, Your Honor?

21 **THE COURT:** Anything further, Mr. Ryan?

22 **PLAINTIFF RYAN:** No, sir.

23 **THE COURT:** That will be the order of the Court.

24 (HEARING CONCLUDED)
25

CERTIFICATE OF COURT REPORTER

I, Sherri L. Penny, RPR, Official Court Reporter for the United States District Court for the Southern District of Mississippi, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings audio recorded and transcribed by me using the audio recording made in this matter, and that same is a true and correct transcript to the best of my ability and understanding.

Any inaudibles that occur in the transcript are a result of the poor recording quality of the audio.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

s/ *Sherri L. Penny*
Sherri L. Penny, RPR
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